

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KRISTOFER JAMES THOMPSON,

Defendant-Appellant.

UNPUBLISHED

June 10, 2010

No. 289033

Allegan Circuit Court

LC No. 08-015734-FC

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree premeditated murder, MCL 750.316(1)(a), and conspiracy to commit first-degree premeditated murder, MCL 750.316(1)(a); MCL 750.157a. Defendant was sentenced to life in prison without parole for both convictions, with credit for 328 days in jail. We affirm.

I. PHOTOGRAPHS OF THE VICTIM

Defendant argues there was no relevance to the inflammatory photographs of the victim at the scene and the autopsy, that there was ample testimony about the extent and nature of the injuries to the victim, and that as a result, the probative value of the photographs was substantially outweighed by their prejudicial effect. We disagree.

The challenged photographs are not in the lower court file and were not submitted to this Court on appeal. In addition, defendant has not responded to our request to submit the photographs. “[G]enerally, the appellant bears the burden of furnishing the reviewing court with a record that verifies the basis of any argument on which reversal or other claim for appellate relief is predicated.” *Petraszewsky v Keeth*, 201 Mich App 535, 540; 506 NW2d 890 (1993). Accordingly, we consider this issue waived because it is impossible to properly examine the issue without the photographs. MCR 7.210(C); *People v Wilson*, 196 Mich App 604, 615; 493 NW2d 471 (1992). Nevertheless, we have reviewed the record and the trial court’s decision to admit the autopsy photographs. We find no abuse of discretion where the photographs were relevant to the issue of defendant’s intent and corroborated the medical examiner’s testimony. Further, defendant now challenges the admission of photographs of the victim’s body at the scene where it was recovered. Defendant has not demonstrated that admission of those photographs constituted plain error.

II. DEFENDANT’S CONFESSION

Defendant also argues that he made no admissions of guilt until informed by the jail that his wife was arrested and incarcerated and that the arrest of his wife greatly affected him and resulted in him being coerced into confessing. He contends that because his confession was coerced and involuntary, its admission at trial violated his constitutional rights to counsel and against self-incrimination. We disagree.

We review a trial court's findings of fact during a suppression hearing for clear error, “giving deference to the trial court's resolution of factual issues.” *People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001). We review “de novo the trial court's ultimate decision on a motion to suppress.” *Id.*

A defendant has a right against self-incrimination, pursuant to the Fifth Amendment of the United States Constitution, US Const, Am V, and a right to counsel, pursuant to the Sixth Amendment of the United States Constitution, US Const, Am VI. Statements by a defendant made during custodial interrogation are inadmissible unless the defendant voluntarily, knowingly, and intelligently waived his right against self-incrimination. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Garwood*, 205 Mich App 553, 555-556; 517 NW2d 843 (1994). To be valid, a waiver “must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception,” and it “must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran v Burbine*, 475 US 412, 421; 106 S Ct 1135; 89 L Ed 2d 410 (1986). When determining whether a statement is voluntary, numerous circumstances should be considered, including: the age of the defendant, education or intelligence level, previous experience with police, repeated or prolonged nature of questioning leading to the statement, length of detention before the statement, lack of advice to the defendant about his rights, whether the defendant was injured, intoxicated, or drugged, whether he was in ill-health or deprived of food, sleep or medical attention, and whether he was physically abused or threatened with abuse. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). Voluntariness is determined by examining the totality of the circumstances surrounding a statement to establish if it was the product of an essentially free and unconstrained decision by its maker. *Cipriano*, 431 Mich at 333-334. Volunteered statements of any kind are not barred by the Fifth Amendment of the United States Constitution, US Const, Am V, and are admissible. *Miranda*, 384 US at 478; *Rhode Island v Innis*, 446 US 291, 300; 100 S Ct 1682; 64 L Ed 2d 297 (1980).

We conclude that the trial court properly denied defendant’s request to suppress his confession because defendant’s right to counsel was not violated and there was no evidence to suggest that defendant’s confession was coerced or obtained pursuant to threats to prosecute defendant’s wife. Officer Joshua Cole and Detective Bretton Ensfield both testified that defendant specifically requested to speak to detectives without a lawyer. In addition, the transcript of the interview clearly reflects that defendant requested to speak with detectives without a lawyer. Defendant was also advised of his *Miranda* rights before the interview began.

Moreover, defendant’s statements were completely voluntary and not made as the result of threats or coercion. Detective John Stidham indicated that he did not promise defendant anything or threaten or coerce defendant in any way before or during the interview. Nothing in

the record demonstrates that the police used the threat of prosecuting defendant's wife to obtain a confession from defendant. In addition, defendant articulated from the very beginning that his purpose in making the statement was not to get his wife out of trouble. Thus, defendant was not negotiating any sort of deal with the police or making a statement because he was coerced or threatened into making a statement in order to help his wife.

Additionally, defendant was clearly advised of his rights before the confession, and the questioning by the police was not hostile and lasted only approximately 1-1/2 hours. Defendant also appeared to be an appropriate age, education or intelligence level, and any previous experience defendant may have had with the police did not appear to affect the voluntariness of his confession. Defendant was given water and did not appear injured, intoxicated, drugged, deprived of food, sleep, or medical attention, and was not physically abused or threatened with abuse. Detectives Ensfield and Stidham both testified that they had no cognitive concerns with regard to defendant. Defendant's claim that his confession was involuntary and that he was coerced into confessing has no merit. Hence, we conclude that the trial court properly denied defendant's request to suppress his confession. *Frohriep*, 247 Mich App at 702.

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot